

Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Friday, April 12, 2019

PROCEEDING COMMENCED UNDER Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): ADAM BRENDON SCOTT GREER

Applicant: DANIELLE NICOLE ADAMS

Property Address/Description: 33 GOLFVIEW AVE

Committee of Adjustment Case File: 18 157188 STE 32 MV

TLAB Case File Number: 18 255899 S45 32 TLAB

Hearing date: Friday, April 05, 2019

DECISION DELIVERED BY G. BURTON

APPEARANCES

NAME	ROLE	REPRESENTATIVE
ADAM BRENDON SCOTT GREER	OWNER/APPELLANT	
DANIELLE NICOLE ADAMS	APPLICANT/PARTY	
HCK CONTRACTING SERVICES	PARTICIPANT	
JAMES WHITTAMORE	PARTICIPANT	
REGINALD LEBLANC	PARTICIPANT	

INTRODUCTION AND BACKGROUND

This was an appeal to the Toronto Local Appeal Body (TLAB) by the owners of 33 Golfview Avenue in the Upper Beach area of Toronto. They appealed the refusal by the Committee of Adjustment (COA) on October 24, 2018 to approve variances needed "to alter the existing two-storey semi-detached dwelling by constructing a rear two-storey addition, a third storey addition with front and rear balconies and a rear first floor deck" (as expressed in the COA Notices of Hearing and Decision).

The property is zoned R(f7.5; d0.6)(x750) under the City of Toronto Zoning By-law 569-2013 (the New By-law) and R2 Z0.6 under the former Toronto By-law 438-86 (the Old By-law). It is designated *Neighbourhoods* under the Official Plan (OP).

MATTERS IN ISSUE

Was the COA refusal appropriate, since it seemed to be based only on the unexpected opposition of the immediate neighbour to the south, Mr. LeBlanc?

JURISDICTION

For variance appeals, the TLAB must ensure that each of the variances sought meets the tests in subsection 45(1) of the *Planning Act* (the Act). This involves a reconsideration of the variances considered by the Committee in the physical and planning context. The subsection requires a conclusion that each of the variances, individually and cumulatively:

- maintains the general intent and purpose of the official plan;
- maintains the general intent and purpose of the zoning by-law;
- is desirable for the appropriate development or use of the land, building or structure; and
- is minor.

These are usually expressed as the "four tests", and all must be satisfied for each variance, individually and collectively.

In addition, TLAB must have regard to matters of provincial interest as set out in section 2 of the Act, and the variances must be consistent with provincial policy statements and conform to provincial plans (s. 3 of the Act). A decision of the TLAB must therefore be consistent with the 2014 Provincial Policy Statement (PPS) and conform to (or not conflict with) any provincial plan such as the Growth Plan for the Greater Golden Horseshoe (Growth Plan) for the subject area.

Under s. 2.1 (1) of the Act, the TLAB is also to have regard for the earlier Committee decision and the materials that were before that body.

EVIDENCE

The owner Mr. Greer provided evidence in support of the appeal, as did his spouse Ms. Adams, an architectural technologist and interior designer. They propose a small third floor addition to provide necessary extra space (master bedroom and bath) on top of their already-authorized second floor addition (a building permit issued on June 12, 2018). Rather than extend this portion even farther to the rear, as the present zoning

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would permit, they now propose to build up rather than out. This would assist in preserving the root system of an extremely large oak tree in the rear yard. The proposed third floor addition requires most of the variances now sought.

The property is located north of Kingston Road and east of Woodbine Avenue. There is a school just to the south. The terrain is very sloped in the immediate area, higher at the north than the south, next to Mr. LeBlanc's two-storey dwelling. The subject property is the south half of a semi-detached structure. The owner of the other half at 35, Mr. James Whittamore, wrote a letter in support of the proposal to the COA, received by it on October 19, 2018. This dwelling already has a modern rear addition. (See photo in Exhibit 1).

He described the present lot, with a depth of 34 m., a dwelling of 650 sq. ft., an unfinished basement and a two-level large deck at rear. The latter is necessary because of the hilly terrain, again very evident in most of the photos presented in evidence. I also visited the site to better assess the neighborhood.

Mr. Greer stated that he had not prepared a formal presentation for the COA hearing, with pictures and statistics on the similar additions nearby. He had not considered it necessary as he received no adverse reports from any City departments. He had discussed the proposal with all of the nearby neighbours. Therefore, Mr. LeBlanc's opposition at the COA came as a surprise. It appeared to carry the day with the members, resulting in the refusal of the application.

Mr. Greer testified that the present structure, even with the approved second floor addition, would still comprise only 69% lot coverage. This is less than the by-law standard, so they could have added 100 square feet more. However, they decided against going farther to the rear, and/or excavating the basement for additional space. This was to preserve the canopy and root system of the large (DBH of 45 inches) 200-year-old red oak tree in the rear yard. The extent of its canopy, over several properties, can be seen on the Site Plan in Exhibit 1. Retention would retain privacy and sunlight for the neighbours. The applicants even had a Forestry Report conducted to assure themselves that the tree could be protected during construction. This was not required by the City Urban Forestry department. The recommendations made were for costly individually-dug footings and piers to protect the root system. The owners intend to construct in the way suggested.

From the front, the third floor addition would not be seen above the existing structure. It is only 20 inches above the existing gable. It would add only 200 square feet, Ms. Adams added, of which 100 would be for stairs. They could have added 100 sq. feet to the existing building permit as it is, but chose to go up rather than out into the tree roots or canopy.

The variances needed are:

1. Chapter 10.10.40.10.(2)(A)(i) & (ii), By-law 569-2013

The maximum permitted height of all front and rear exterior main walls is 7.5 m. The height of the front and rear exterior main walls will be 9.71 m.

2. Chapter 10.10.40.10.(2)(B)(ii), By-law 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 7.5 m.

The height of the side exterior main walls facing a side lot line will be 9.71 m.

3. Chapter 10.10.40.10.(7), By-law 569-2013

Floor levels within an addition, extension or enlargement to the rear of a residential building may not be higher than the uppermost floor level in the existing building. In this case, the floor levels in the addition will be higher than the uppermost floor level of the existing building.

4. Chapter 10.10.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index of a semi-detached dwelling is 0.6 times the area of the lot (106.20 m2).

The altered semi-detached dwelling will have a floor space index equal to 0.77 times the area of the lot (135.81 m2).

5. Section 6(3) Part I 1, By-law 438-86

The maximum permitted gross floor area of a semi-detached dwelling is 0.6 times the area of the lot (106.2 m²).

The altered semi-detached dwelling will have a gross floor area equal to 0.77 times the area of the lot (135.81 m2).

6. Section 6(3) Part II 3(I), By-law 438-86

The minimum required setback from the side wall of an adjacent building that does not contain any openings is 0.9 m.

The altered semi-detached dwelling will be located 0.12 m from the adjacent building.

7. Section 6(3) Part II 8 D (I), By-law 438-86

The maximum permitted height of an uncovered platform which projects into the required setbacks is 1.2 m above grade.

In this case, the platform will have a height of 1.48 m above grade.

8. Section 6(3) Part II 3.C(I), By-law 438-86

The minimum required side lot line setback of a semi-detached dwelling is 0.45 m where the side wall contains no openings and an attached structure is without walls. The altered semi-detached dwelling will be located 0 m from the north side lot line.

Mr. Greer had pointed out in his Notice of Appeal that many of the variances may not even be required now, following the approval of the New By-law.

He emphasized in his evidence the variety of dwelling sizes nearby, with two, two and a half storeys and bungalows, and many semi-detached. There is no predominant size or type. He illustrated this variety by photos in in Exhibit 1 of the many varied dwellings in close proximity. He pointed to the significant number of variance approvals nearby. In

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the ten years supplied, out of the 107 properties on the street, 110 applications for variances were approved, and within 500 metres of the subject property.

He cited the actual variances granted. The topography here leads to differing design requirements. Heights greater than that requested here for exterior main walls (9.71 m) were granted for:

- -135 Golfview (11.40 m);
- 74 Burgess Ave., the right side of a triplex (10.50 m and 10.20 m);
- 63 Burgess –a similar proposal to the present (10.31 m and 9.9 m).

Respecting FSI/GFA, 0.77 times the lot area is sought here, versus the By-law requirement of 0.6. Increases were granted for:

- 63 Burgess Avenue at 1.0 and 0.99;
- 135 Golfview at 1.07 and 1.18;
- 50 Corley Avenue, 1.07 times;
- 77 Corley at 1.34 and 0.97; and
- 26 Cassels Ave. at 0.95 times the area of the lot, a very recent decision.

For setbacks, there were some granted for 0 setback beside another semi, and also at 0 m for a side lot line from the side wall of an adjacent building that does not contain any openings (135 Golfview). This has the appearance of three storeys because of the grading, although it is two. The proposed would be 0.12 m from the side wall of 31 to the south, its current location.

He illustrated a new build at 58 Corley to the rear of Mr. LeBlanc's dwelling, with an appearance of great height, opposed by neighbours as it would block light. Their proposal, being to the north, would not do this.

Mr. Greer then addressed the OP policies applicable to the proposal. Respecting the commentary in Policy 2.3.1 of the OP that neighbourhoods would not be frozen in time, he stated that this proposal retained the natural and built fabric and design quality of the street. The visual effect would not change. It would also address the Environmental preservation policies in Chapter 2, as the care and cost taken already to preserve the invaluable tree shows compliance.

For compliance with the *Neighbourhoods* policies in the OP, Mr. Greer stated that are many similar or even larger additions close by. There would be no light, view, overlook or privacy adverse effects on the neighbours. It does not constitute overbuilding in the context of this neighbourhood in transition. Rather, it would assist in maintaining and replenishing the housing stock, since this home was built in the 1920s. Mr. Greer said that this was one of the only dwellings on the street that had not had a third storey added. There are 22 open building permits nearby, so that nearly one in four dwellings were being improved. He provided graphic evidence of this in Ex. 1.

ANALYSIS, FINDINGS, REASONS

Mr. LeBlanc, the neighbour at 31 Golfview, did not take any part in the TLAB process. Although he filed notice of his intention to become a participant, he did not file the required materials or attend the Hearing. There is effectively no longer any opposition to this application.

I must be satisfied, however, that the variances meet the statutory tests. While Mr. Greer was not qualified as an expert planner, both appellants provided effective testimony concerning the tests. The OP policies as set out by Mr. Greer are met by this proposal. A third floor addition has been added throughout the immediate neighbourhood. Many appear very large, such as at 135 Golfview. There is no single dwelling type here, or even two.

I note that the By-law standards for Variances 1 and 2 (exterior main wall heights) have been remitted to City staff for adjustments, as this measurement has proven too restrictive for narrower lots. Variances 4 and 5 are very similar standards under both By-laws. Variances 6 and 8 reflect existing conditions of the side yard setbacks. There are in fact few variances here, and their size is not significant.

I agree with Mr. Greer that are many similar or even larger additions close by. It does not constitute overbuilding in the context of this neighbourhood. I agree that this addition is within the existing physical character of the neighbourhood.

The size of the addition is indeed minor, compared to the rest of the structure (it would be only 25.50 sq. m., less than half of the first and second floors – Zoning Certificate, April 24, 2108.) I see no undue adverse impact from the addition, whether respecting light, view, overlook or privacy. There is only one bathroom window on the south side, next to Mr. LeBlanc. The appellants have already waterproofed his basement at their expense, and agreed to place a fence between the properties. I conclude that his interests have been more than adequately addressed by the design, and by the appellants personally. I find that the variances, individually (there is already a permit for the second floor addition) and collectively, meet the necessary tests in subsection 45(1) of the Act. Expanded housing in appropriate locations such as this would also comply with or not conflict with applicable provincial policies.

DECISION AND ORDER

The TLAB orders that the appeal is allowed, and that:

- 1. The variances to Zoning By-laws 438-86 and Zoning By-law No. 569-2013 as listed in Attachment 1, are authorized.
- 2. The semi-detached dwelling shall be constructed substantially in accordance with the Plans filed as Exhibit 3, and attached as Attachment 2 to this decision. Any other variances that may appear on these plans that are not listed in this decision are not authorized.

ATTACHMENT 1 – Variances

1. Chapter 10.10.40.10.(2)(A)(i) & (ii), By-law 569-2013

The maximum permitted height of all front and rear exterior main walls is 7.5 m.

The height of the front and rear exterior main walls will be 9.71 m.

2. Chapter 10.10.40.10.(2)(B)(ii), By-law 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 7.5 m.

The height of the side exterior main walls facing a side lot line will be 9.71 m.

3. Chapter 10.10.40.10.(7), By-law 569-2013

Floor levels within an addition, extension or enlargement to the rear of a residential building may not be higher than the uppermost floor level in the existing building. In this case, the floor levels in the addition will be higher than the uppermost floor level of the existing building.

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The altered semi-detached dwelling will be located 0.12 m from the adjacent building.

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In this case, the platform will have a height of 1.48 m above grade.

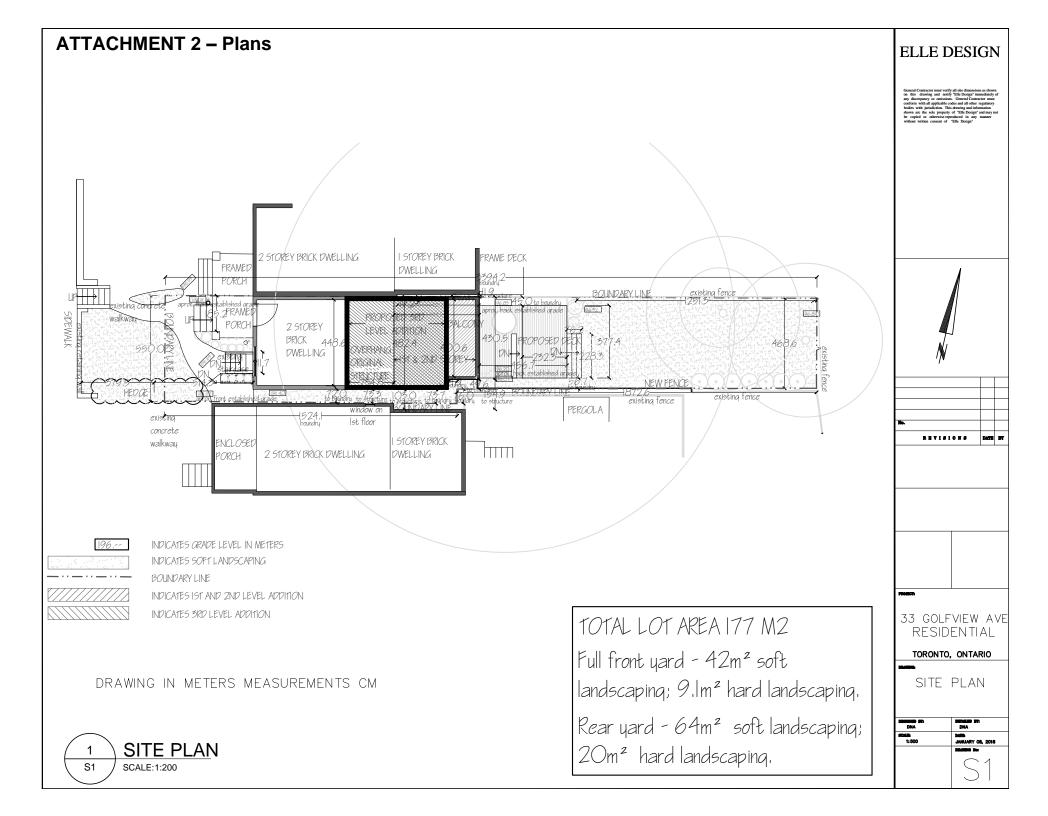
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The minimum required side lot line setback of a semi-detached dwelling is 0.45 m where the side wall contains no openings and an attached structure is without walls. The altered semi-detached dwelling will be located 0 m from the north side lot line.

ATTACHMENT 2 - Plans

G. Burton

Panel Chair, Toronto Local Appeal Body



33 Golfview Avenue - Site Statistics Summary Committee of Adjustment Application # A0485/18TEY

Existing Structure and Property

Total Lot Area: 177m²

Front yard soft landscaping: 42m²
Front yard hard landscaping: 9.1m²
Rear yard soft landscaping: 83.2m²
Rear yard hard landscaping: 25m²

Gross floor area: 60.74m² Ground floor: 30.37m² Second floor: 30.37m²

Basement: no proposed alterations

Established grade: 196.75

Proposed Structure and Property

Total Lot Area: 177m²

Front yard soft landscaping: 42m²
Front yard hard landscaping: 9.1m²
Rear yard soft landscaping: 64m²
Rear yard hard landscaping: 20m²

Gross floor area: 135.81m²

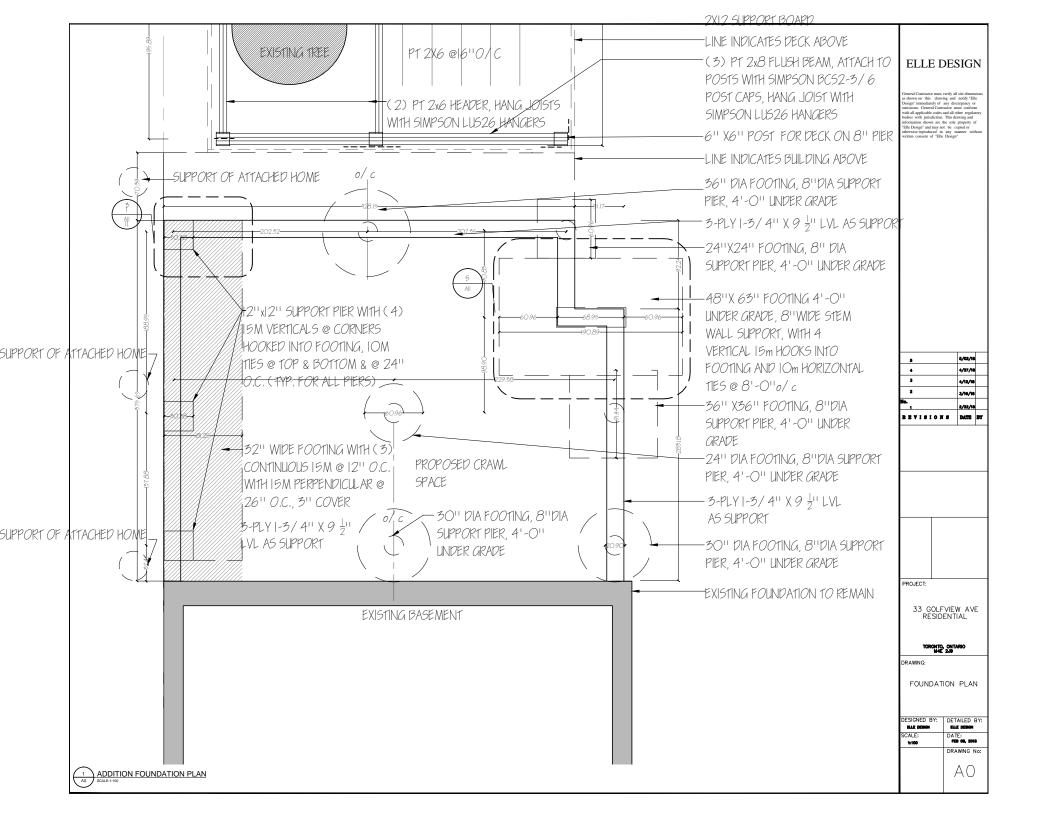
Ground floor: 54.58m² Second floor: 55.73m² Third floor: 25.50m²

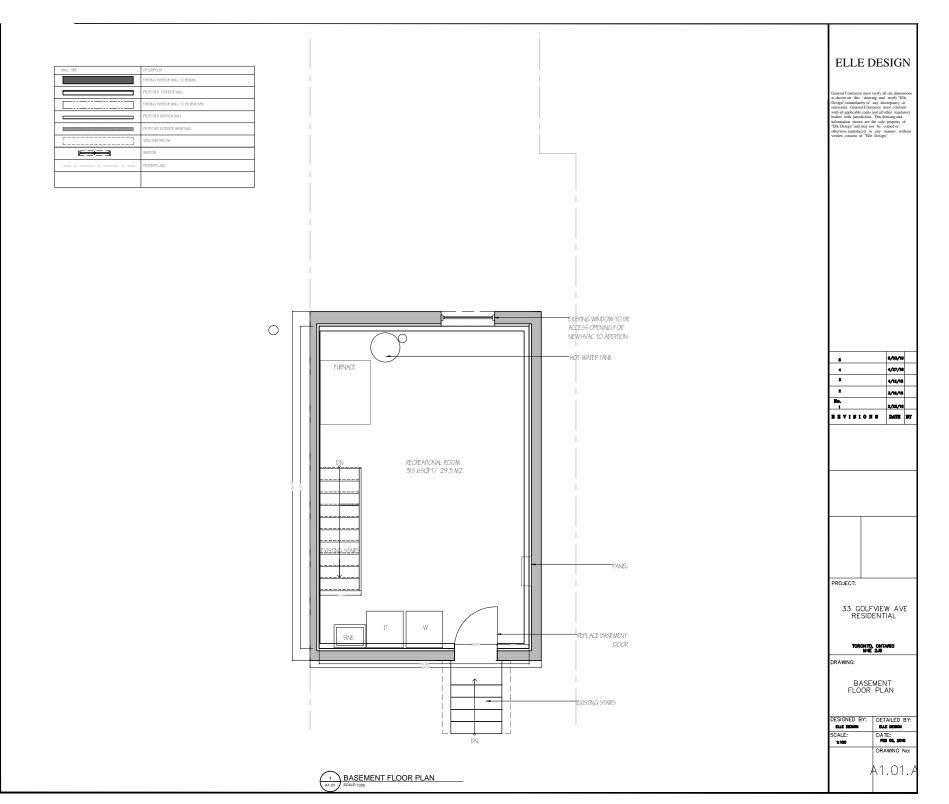
Basement: no proposed alterations

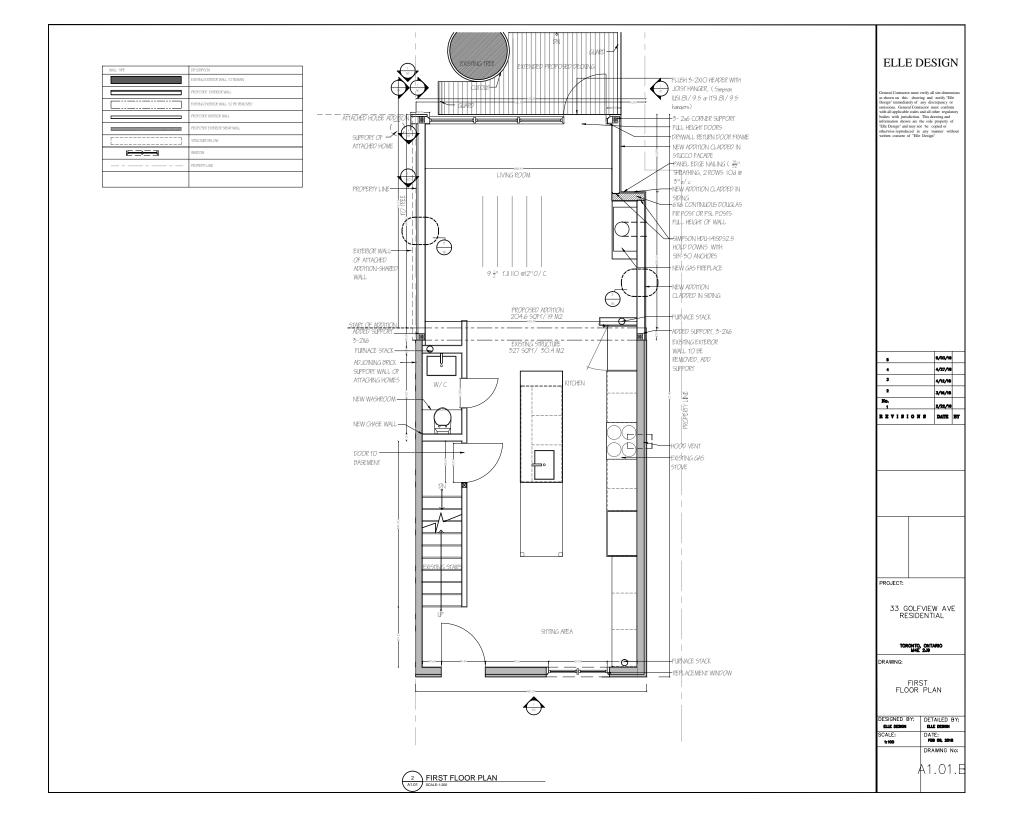
Established grade: 196.75

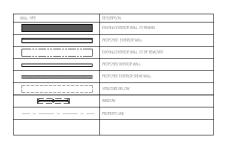
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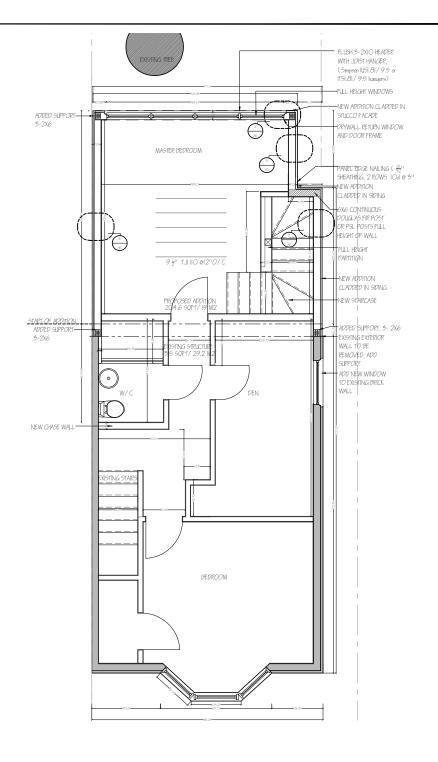
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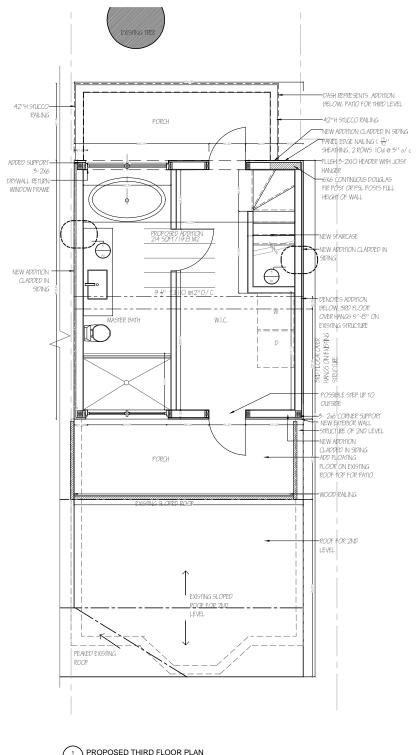
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SECOND FLOOR PLAN

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	EXISTING EXTERIOR WALL TO BE REMOVED
	PROPOSED INTERIOR WALL
	PROPOSED EXTERIOR SHEAR WALL
	STRUCTURE BELOW
	WNPOW
	PROPERTY LINE



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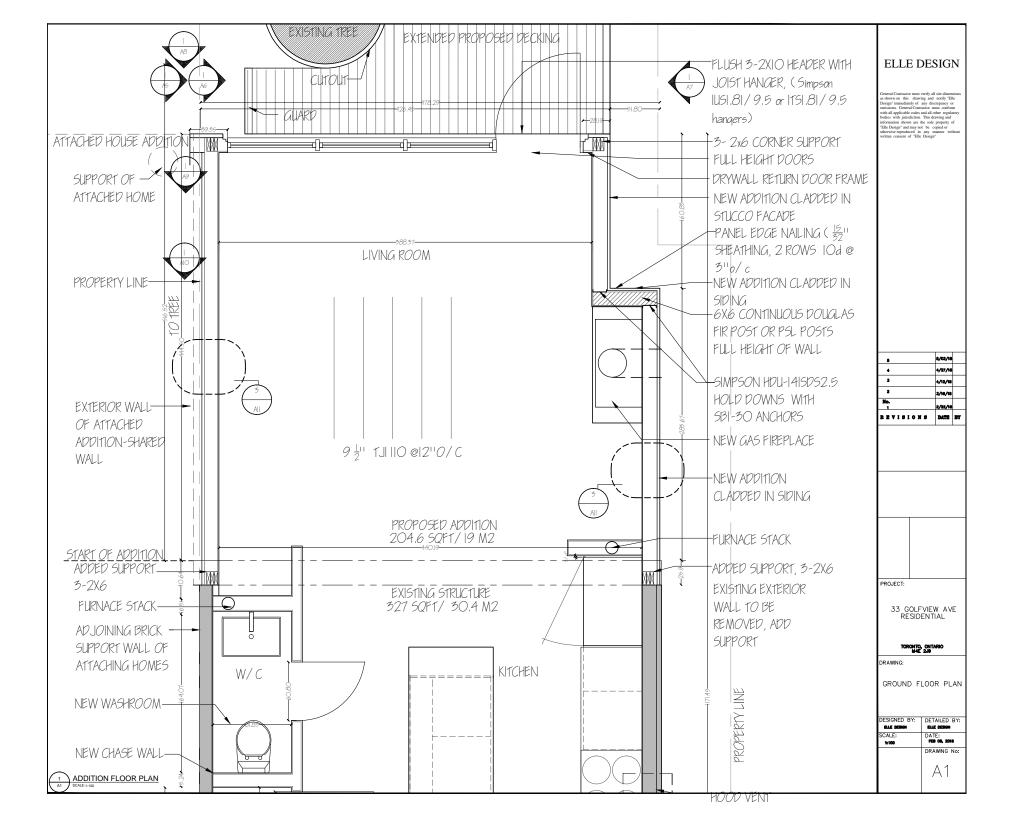
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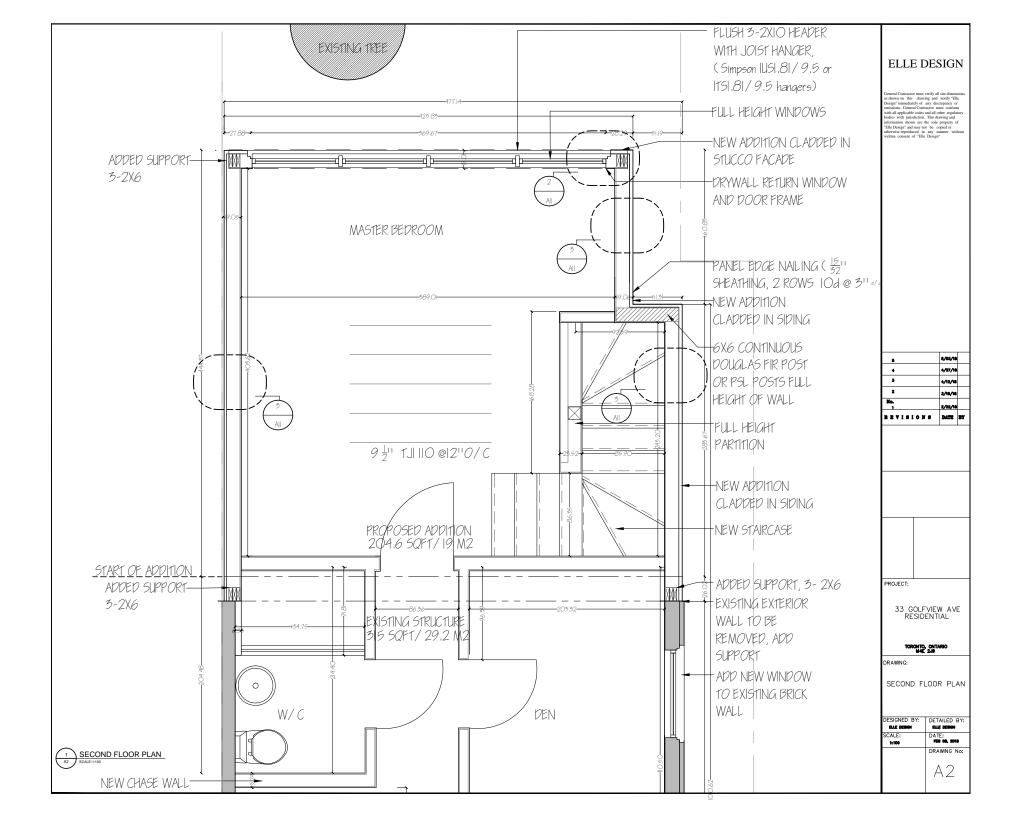
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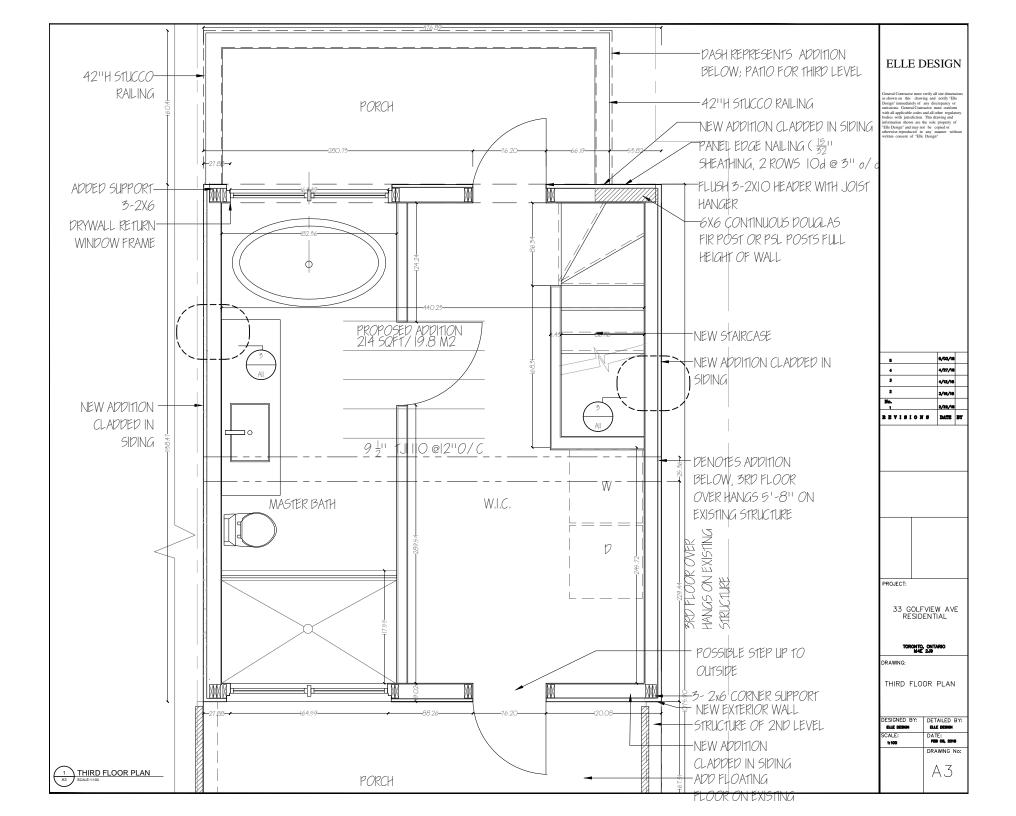
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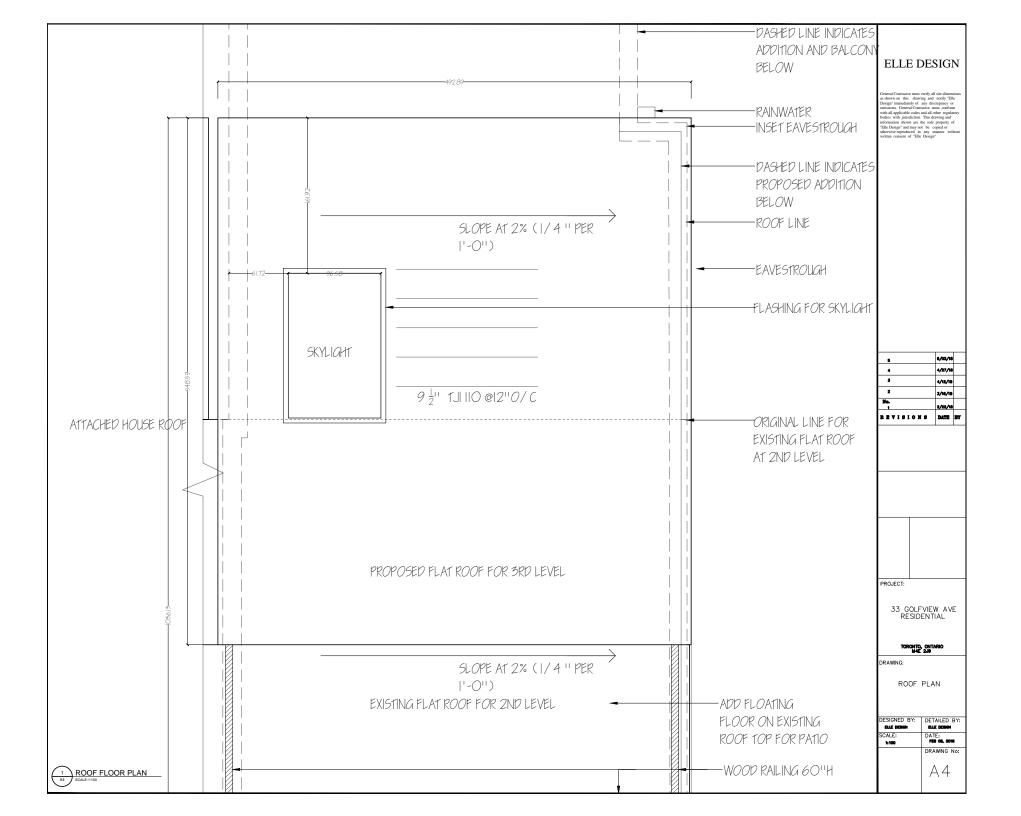
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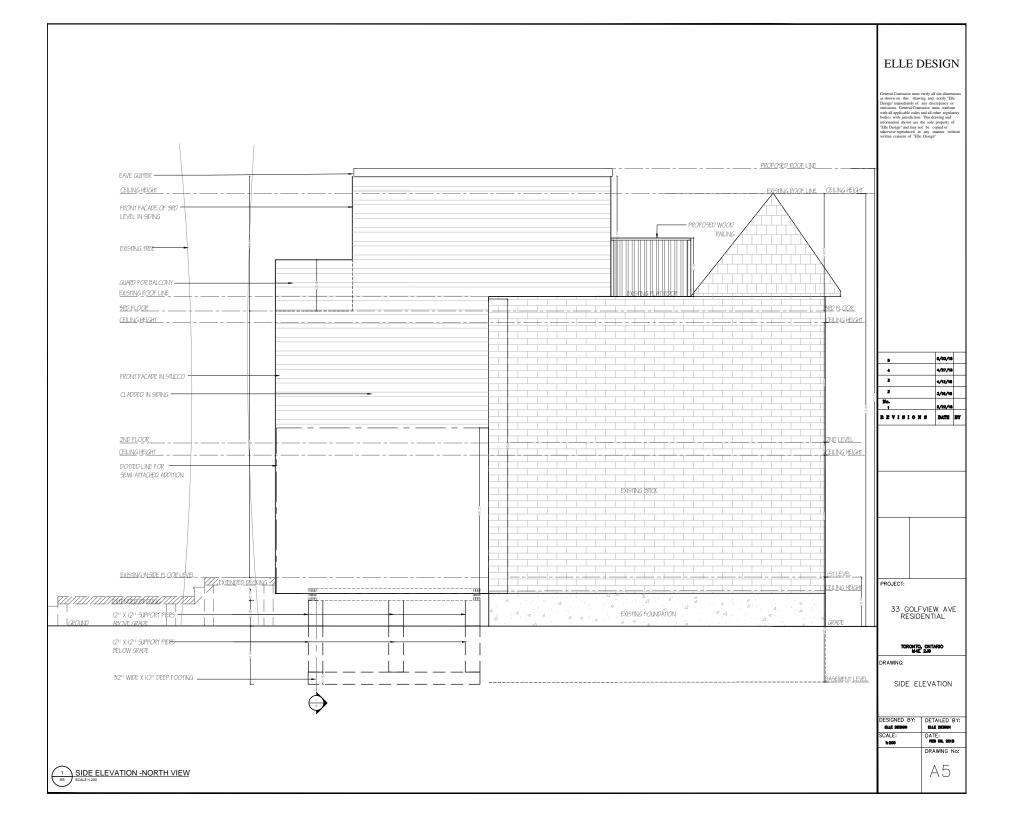


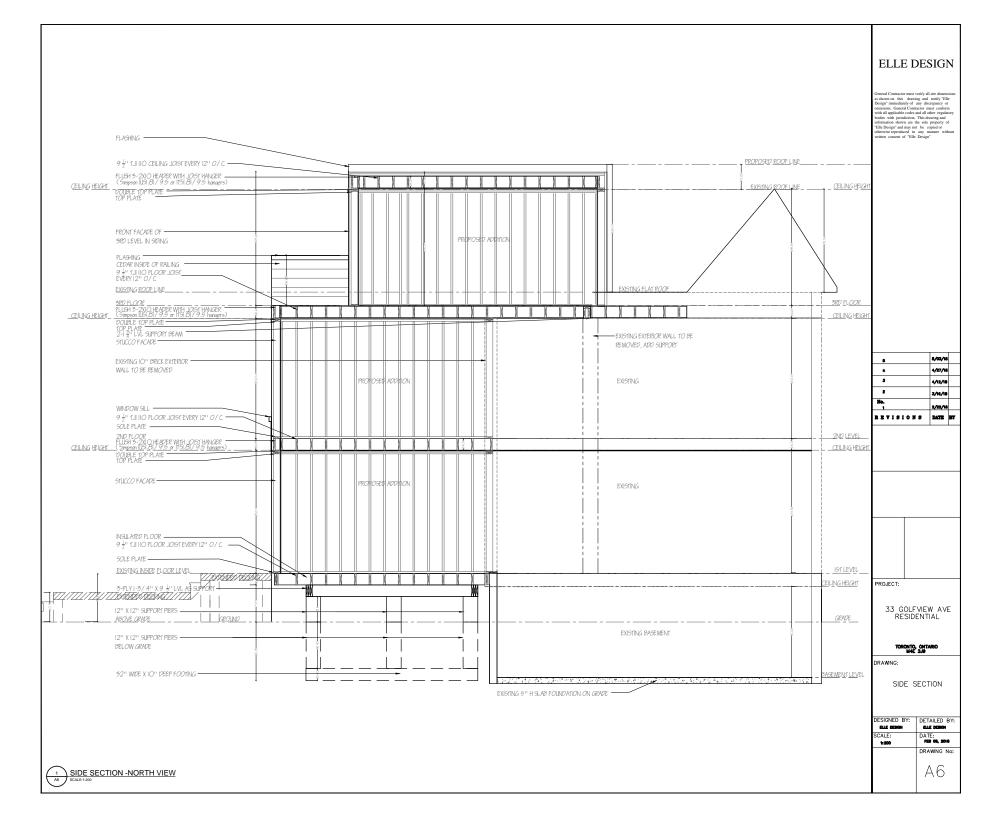


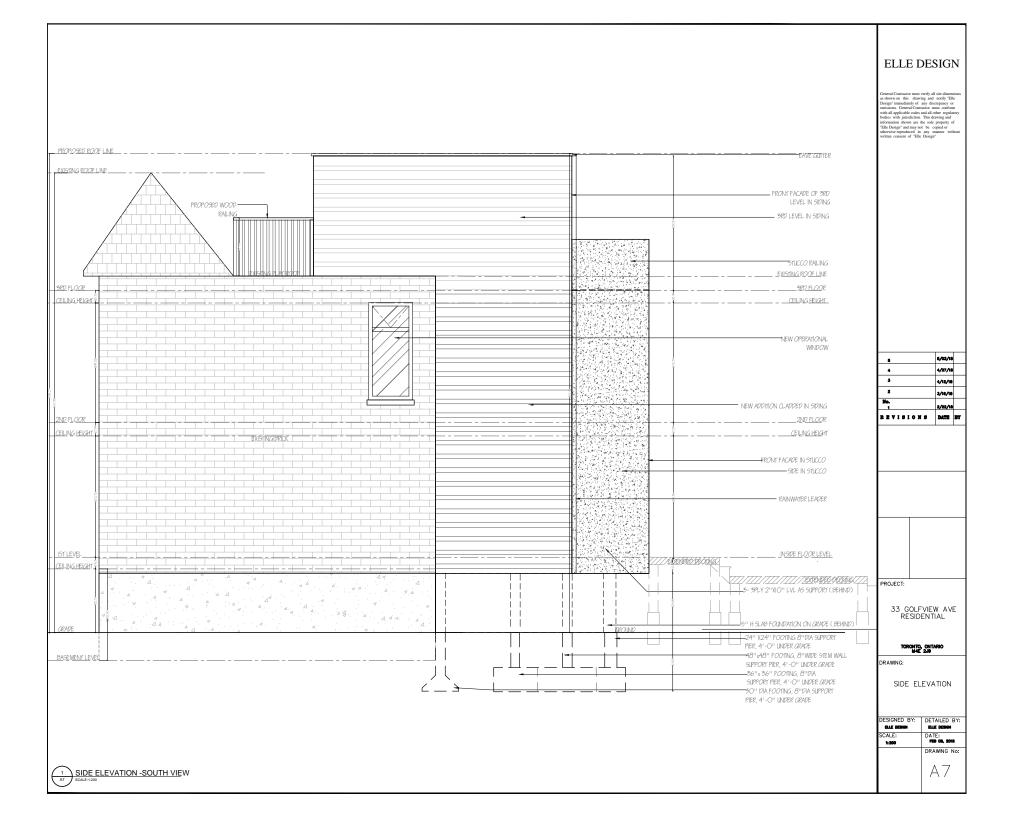












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ELLE DESIGN General Contractor must verify all site dimensions as shown on this drawing and notify "Elle Design immediately of any discrepancy or Design time the contract of the contract FLUSH 3-2XIO HEADER WITH JOIST HANGER —(Simpson IUSI.81/9.5 or ITSI.81/9.5 hangers) 1 DOUBLE TOP PLATE SINGLE TOP PLATE - 3- 2x6 CORNER SUPPORT ---- SOLE PLATE FLUSH 3-2XIO HEADER WITH JOIST HANGER (Simpson IUSI,81/9.5 or ITSI,81/9.5 hanges) XIO HOO 9 % TJIII © 12 O. CELING HEIGHT 5/03/18 - 3- 2x6 CORNER SUPPORT 4/27/18 4/12/18 3/16/18 - SOLE PLATE 2/22/18 REVISIONS DATE BY ----- 3- 2x6 CORNER SUPPORT PROJECT: ABOVE GRADE 33 GOLFVIEW AVE RESIDENTIAL FOOTING, 4'-O'' LINDER GRADE (BEHIND) -24" X24" FOOTING, 8"DIA SUPPORT PIER, 4'-O'' LINDER GRADE TORONTO, ONTARIO M4E 2J9 36" DIA FOOTING, 8"DIA SUPPORT DRAWNG: PIER, 4'-O'' LINDER GRADE FRONT SECTION BELOW GRADE W/ 32" X 10"h FOOTING DESIGNED BY: DETAILED BY: ETTE DESIGN ETTE DESIGN SCALE: DATE: FEB 08, 2018 DRAWING No: Α9

1 FRONT SECTION -EAST VIEW

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ELLE DESIGN CAP EXISTING INSIDE FLOOR LEVEL 9 ½" TJI 110 FLOOR JOIST EVERY 12" 0/C -INSULATED FLOOR 3-PLY 1-3/4" X 9 2" LVL AS SUPPORT 12"x12" SUPPORT-PIER 5" H SLAB -1. around 5/03/18 4/27/18 4/12/18 3/10/18 REVISIONS DATE BY (4) ISM @ VERTICALS @ CORNERS HOOKEP INTO FOOTING, IOM TIES @ 10P & BOTTOM & @ 24" O.C. (1YP. FOR ALL PIERS) 4 ⊲ . 32" WIDE x 10' DEEP FOOTING (3) CONTINUOUS ISM @ 12 O.C. WITH PROJECT: ISM PERPENDICULAR @26"O.C., 3" COVER 33 GOLFVIEW AVE RESIDENTIAL TORONTO, ONTARIO M4E 2J9 DRAWING: DETAILS DESIGNED BY: DETAILED BY: ELLE DEMON ELLE DEBION SCALE: DATE: FEB 08, 2016 FOUNDATION PIER DETAIL DRAWING No: /A1

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	SHEATHING CONTINUOUS INSULATION
	WITH DRAINAGE CHANNELS STUCCO OR SIDING

WINDOW SILL DETAIL

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DETAILS

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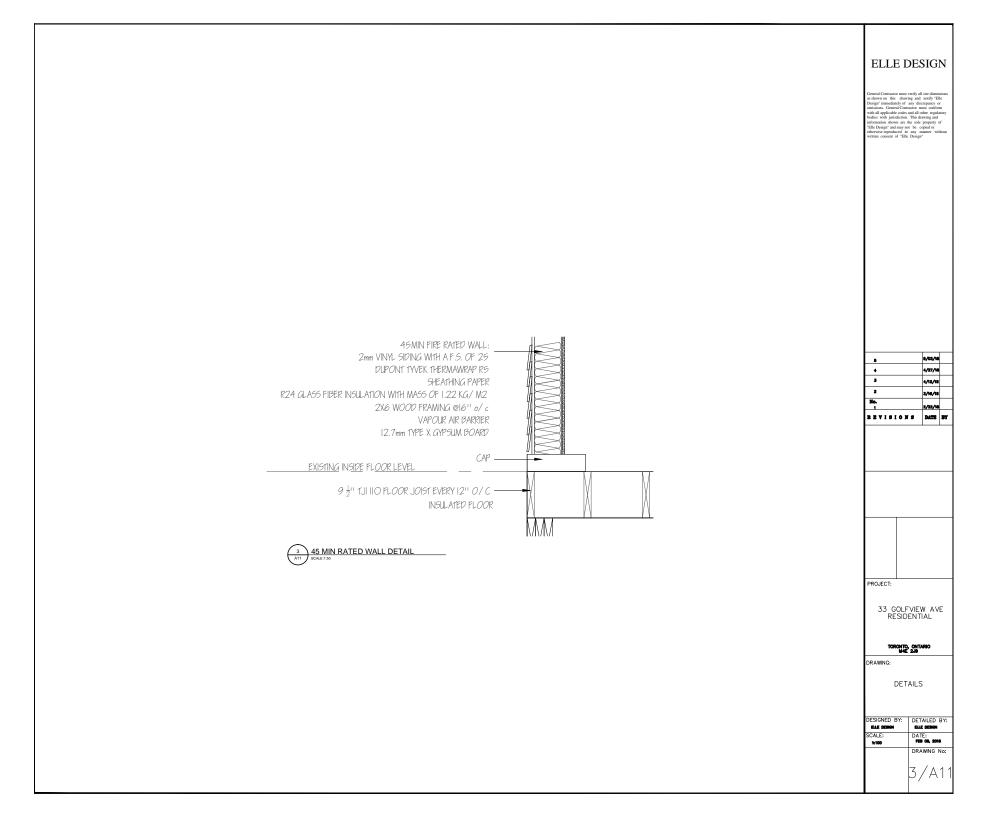
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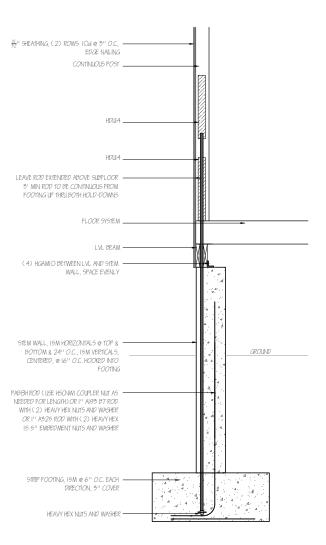
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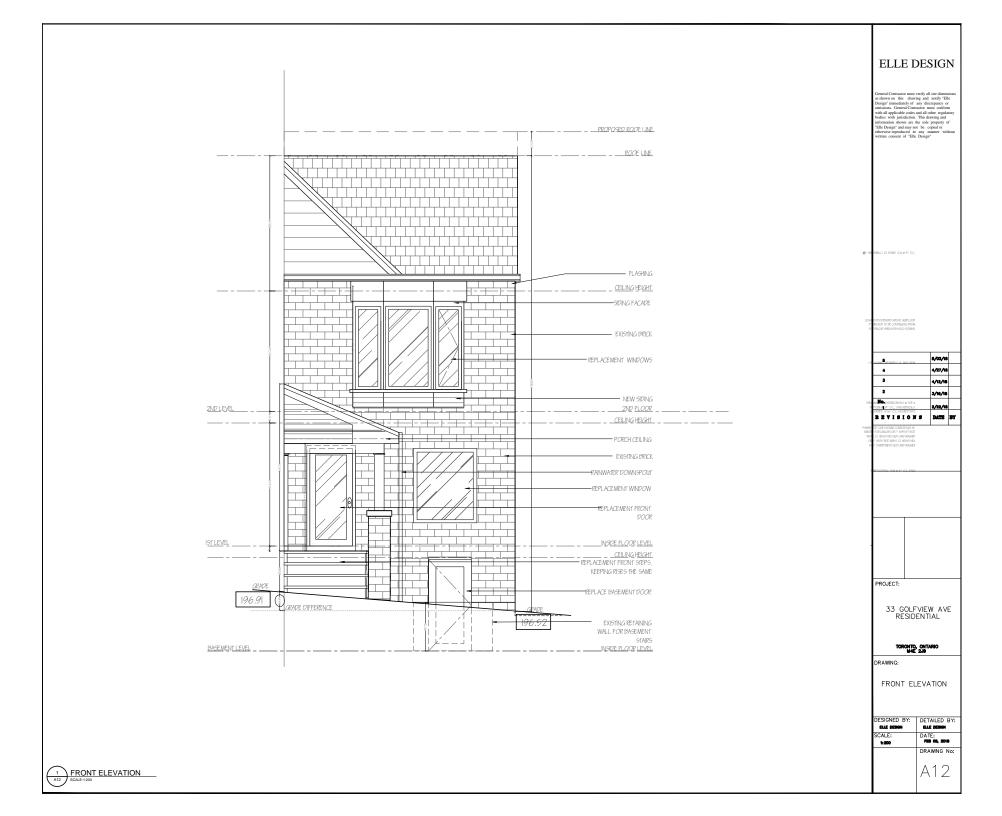
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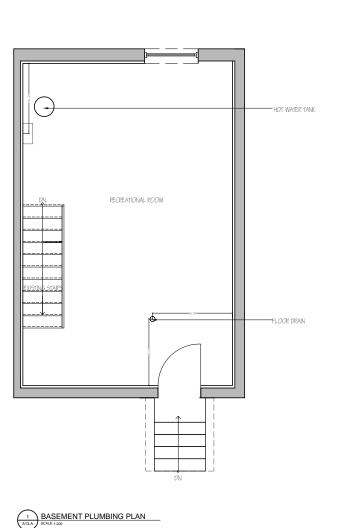


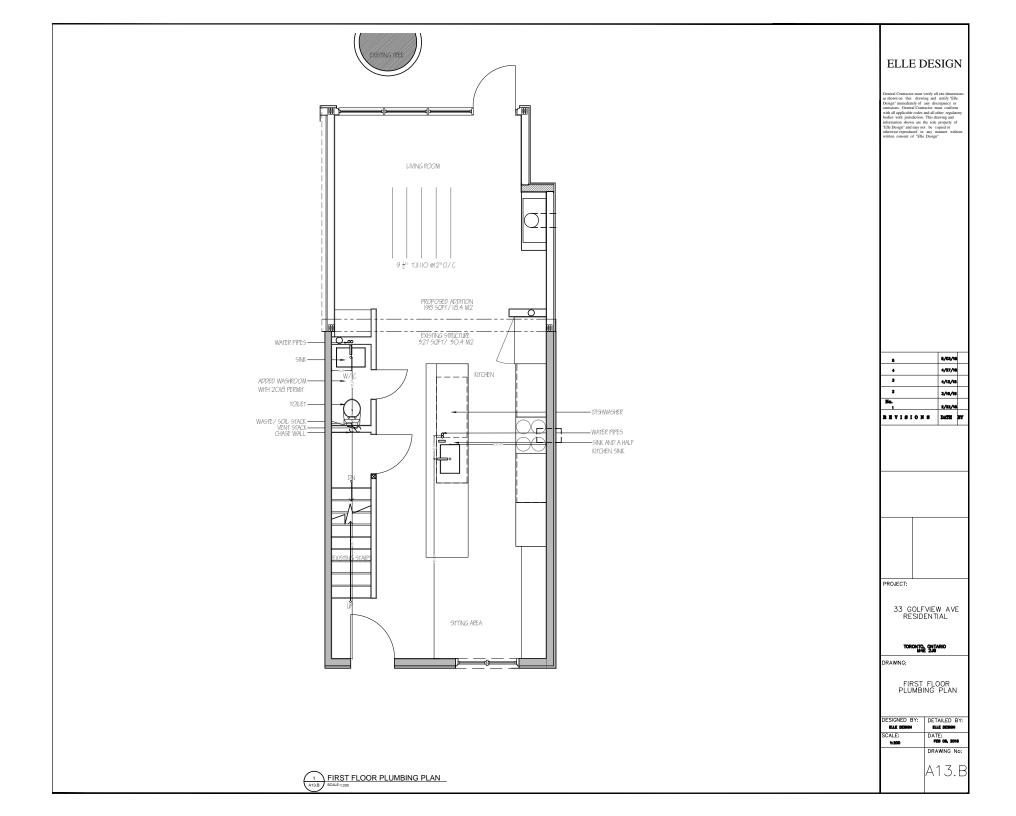
SHEAR WALL FOUNDATION DETAIL

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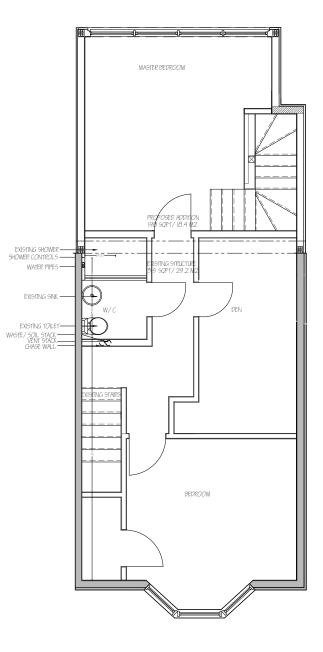


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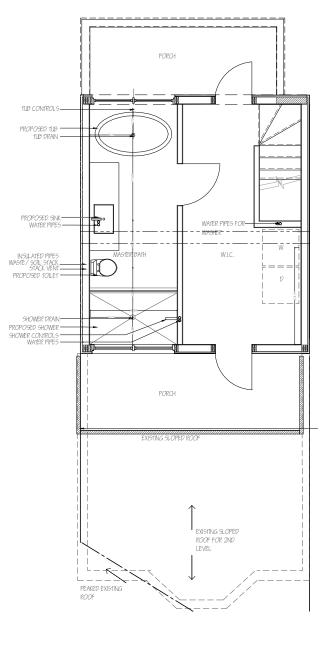
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SECOND FLOOR PLUMBING PLAN

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REVISIONS	DATE	BY

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DRAWING:

THIRD FLOOR PLUMBING PLAN

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